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Olubusola Tunde Shemudara
Ph.D. Lecturer, Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Ondo State, Nigeria

Correspondence
Olubusola Tunde Shemudara
Ph.D. Lecturer, Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Ondo State, Nigeria

Ayélála, a sacred divinity among the Ilaje and Apoi of Ondo state Nigeria as a judicial institution: Echoes from African legal thought

Olubusola Tunde Shemudara

Abstract
Ayélála criminal trial is an indigenous criminal jurisprudence which is in practice among the Ilaje and Apoi of Ondo State, Nigeria. It is curbing crime rate, perversion of justice and corruption which are prevalent in the administration of criminal justice system in Nigeria. Scholars have worked on English criminal justice system, African legal thought, roles of sacred divinities in enforcement of moral values, and maintenance of peace and order in African societies separately. The need to study indigenous criminal jurisprudence along side the English criminal justice system has not been given adequate attention. This study, therefore, examined the engagement, functioning and effectiveness of *Ayélála* in the context of English criminal justice system among the Ilaje and Apoi of Ondo State.
Ayélála is feared and revered because of her effectiveness and swiftness in the dispensation of justice among the Ilaje and Apoi of Ondo State. There is a structure wherein there is investigation of complaints like in the English criminal justice system through divination. It is a justice system for deterrent against crime. *Ayélála* affords an accused person the opportunity of stating his case and does not exhibit any bias in rendering her judgment. *Ayélála* indigenous criminal trial is less expensive and devoid of technicalities prevalent in the English courts. Unlike the English courts, cross examination of witnesses is dispensed with. Corrupt priests are apprehended and punished by *Ayélála*, oath taking under *Ayélála* proceeding is feared unlike in the English courts where it is done with the Bible, Quran or by affirmation; oath taken before *Ayélála* which turns out to be false, results in fatal consequences. Forfeiture of properties is common to both English and *Ayélála* criminal justice systems. There is accelerated hearing, prompt judgment in *Ayélála* criminal justice system. Investigation of complaints, bail, plea taking, confession, admission, conviction and death sentence are found in both English and *Ayélála* criminal justice systems. The trial is adversarial and accusatorial; there is no legal representation of parties, no address of counsel and right of appeal, *Ayélála's* judgment is final while the English courts allow all these processes.
Ayélála traditional trial is effective, swift and potent though it does not encompass all that exists in the English criminal justice system. Traditional criminal justice system should be integrated into the English criminal justice system in Nigeria.

Keywords: English justice system, criminal trial, *Ayélála*, Ilaje and Apoi.

Introduction
The existence of government and introduction of law in our society today have no doubt been the greatest achievement to mankind whether in the Western World or African setting. The prevailing features were chaos and anarchism as identified in Hobbes' analysis of state of nature before social contract in which all men submitted their powers and good for the purpose of achieving peace and order. It was the voluntary association of the individuals that led to the formation of an entity called state.
In the state of nature, man is stripped of any kindness and like the animals; he is delivered to the jungle'. He reigns there with the anarchistic power of the multitude (*potential*): ''where it is not common power, it is law, where it is not law, it is not injustice'' (Jean Jacques Rousseau 1763-70).
While the coming together and formation of civil state in the Western world has been attributed to willing and planned agreement of men, formation of state in African societies has been said to be natural. To put it in the language of Max Weber cited by Otubajo the African conception of society was always at the level of a *Gemeinschaft*, an association which evolves naturally as distinct from a *Gesellschaft*, one which emerges from rational calculation or deliberate planning [1].

African settings were created naturally and the reason for this has been attributed to several beliefs of people, various groups, each living in a world of its own which mesh together to form their coherent thought system. There are beliefs about the origins and nature of state, the authority of the matter, the right of citizen, to mention few.

The antecedent of African settings is located in a traumatic supernatural phenomenon. Origin of tribal groups and African societies are traced to either benevolence of an all powerful god or super-human ancestor which are always shrouded in myths and mystery. For instance, the Yorùbá believe in *Òrìṣàńlá* archangel, sent by God to create the earth and that *Odùduwà* became the first king of Ile - Ife and soon.

Owing to the nexus between the African settings and circumstances surrounding their existence tied to metaphysics and religion, myths indicate quite early that society or state in Africa is a natural outgrowth of a supernatural or super-ordinary juxtaposition of events. It was from this belief that the political structures and organisations developed. Thus, Yorùbá will address their king as *Kábi ó òsí* i.e *kábíèsí*, *Igbákejì Òrìṣà* meaning Question him not, second in command to god. It was from these beliefs that the judicial frame work also developed.

Our society is made up of different people with different idiosyncrasies and differences, and, of course, there must be dispute and crime. Then the question that crops up in one's mind is: is it possible to live without laws or rulers? Because man needs a moral limit, government is absolutely necessary. In the African settings, religion plays a vital role in the political and social set up of society. The gods are feared, custom, tradition and norms, are obeyed and complied with. The likeliness of all men following the principles embedded in the custom, norms, tradition and religion is almost none existence. Man is too likely to drift from these principles.

Unfortunately, people continue to neglect these principles, moral norms of their society and this leads to wrongs, disputes, conflicts and commission of crime. In attempt to maintain peace and order, and to determine the rights and liabilities of people in the society, the African jurisprudence emerged. This is a legal culture which is inherent in the African thoughts, believes and their society. In African traditional milieu, disputes were settled among disputants; crimes and offences were investigated, and punishments were meted out to offenders depending on the nature of the offence. Punishments could be personal or individual and at times collective which would bring disaster to the community.

In spite of all these, it should be borne in mind that the existence of legal system or law in African societies had once been put in doubt by scholars who believed that African had none. There used to be popular fallacies about African jurisprudence. Earliest scholars, majorly the Europeans who first wrote on African people generally on their way of life, had a wrong notion about the nature of African jurisprudence. They were of the position that African had none. Some writers deny that African Law is Law and, therefore, the traditional tribunals are not court; others again, while they are inclined to grant the name of law to African Law, insist that there is no conception in their view relating to distinction between civil and criminal law as it exists in modern English Law.

In reality, there existed before the English legal system the native judicial procedure and customary law system. It was not English common law but African customary law. It was not made by any competent legislative or identifiable one. It was there binding the parties who were subject to them and was enforced by social pressures. The customary law recognised criminal behaviour and civil wrongs. It had different varying modes of punishment for crime or redress for other wrongs. Customary law was passed down from one generation to another. The duty of monarchs or head of very setting is to pronounce it and where they were in doubt the need for other supernatural consultation such as Oracle. Ifa e.t.c arose and in cases where offenders were unknown, the involvement of sacred divinities. This paper therefore showcases *Ayélála* as one of the sacred divinities in Yoruba whose invocation has helped in administration of criminal justice and maintenance of peace and order among the natives.

The Nature of African Civil and Criminal Jurisprudence

African legal culture is designed with a unique speedy practice and procedure and justice is seen to be done. The legal culture recognises legal principles which are *Yorùbá* aphorism that normally come into play during entertainment of disputes. Replica of these proverbs could as well be found in the English legal system. Conspiracy as an offence is also recognised in the primitive settings hence they say in Yorùbá land *Ìka kan ò mú òkúta nílẹ̀* - meaning a finger cannot pick up a stone from the ground. This comes into play where more than one person is involved in commission of an offence.

The African legal system also recognises the principle of natural justice; *viz a viz*: *Audi altarem patem* and *Nemo judex in causa sua*. *Audi altarem patem* means hear the other side, *Nemo judex in causa sua* means you can not be judge in your own cause. Likewise, in Yorùbá legal thought, we say *Àgbà òṣìkà níí gbọ́ ẹjọ́ ẹnìkan dájọ́* meaning only a wicked elder hears one side of a story and pass judgment and *Abẹ kìí mú títí kó gbẹ́ èèkù ara ẹ̀* meaning however sharp a knife may be, it cannot carve its own handle. However, the intervention and the arrival of the Europeans into the country and their presence among the indigenes and introduction of their legal system have no doubt, altered and polluted the unique legal culture of the Africans.

Under the Yorùbá legal culture in Africa, there is in existence their idea of law. To the Yorùbá law is a well known body of customary rules by which everyone regulates his conduct. We still have some divergent views by various scholars about African legal system from which Yorùbá legal culture shares similar features. It is one view that there is no clear distinction between civil and criminal law as we have earlier stated thus the notion of wrong which could either be civil or criminal in nature.

It is also another perception that since the end result of Yorùbá legal culture is reconciliation or restoration to status quo'' it is against the principle of absolute liability. Driberge is one of the proponents of this conception. It has also been contended that the primary role of law in Africa sometimes is to preserve the social equilibrium [2]. But that does not mean that deliberate acts that offend against the rules of the society and constitute a violation of the rights of members are treated on the same basis or with the same revulsion as accidental occurrences or mere inadvertence.

Some scholars also have the notion that wrongful acts and conducts are curbed by supernatural phenomena such as *Ogun, Sango, Ayelala* among others. Yorùbá legal culture has many features which inform its dynamic nature. Adjudication is the nucleus and locus of this culture. Its significance lies in the fact that it is resourceful towards facilitating harmony as well as administration of justice.

The principle or reconciliation and societal harmony also explain why the instruments of the judicial system were moved into socio-political organization. When crimes were committed against any person or property in the African settings, complaint was lodged at various quarters at any of the tiers depending on the gravity of the offence. Lesser offences were treated by the family heads, higher ones by the chief and most grievous offences by the *oba* in the palace. It must be emphasized at this juncture that there is nothing new or special about western legal culture which is alien to the African legal culture.

Under the Yorùbá legal culture, trials normally began with compliant which is common to both civil and criminal matters. In civil matters, compliant are lodged to the heads of the judicial unit as we had earlier stated depending on the nature of the compliant. This explains that there is legal procedure in Yorùbá indigenous courts. There is hierarchy of operation recognisable in Yorùbá legal judicial system. Fatola and Oguntomisin identified Courts of compound heads, *Ile-Ejo ti Ijoye* ward-chief and that of the Oba. The legal process is open; participatory and inquisitorial; the presumption of innocence is not prominent since it is inquisitorial. The reason is that according to them ‘’there is no smoke without fire [3].

In criminal matters, where there was an alleged offence and a compliant was lodged, the suspect was usually invited for interrogation just like arrest in the English legal system where the statement of the suspect is obtained and police commence investigation. It was the findings, therefore, that would help determine whether or not the suspect should be prosecuted or not by charging him to court. Likewise in the Yorùbá settings, there was invitation for interrogation before trial and at times investigation. This may take place either before trial or in the course of it.

Among the Apoi and Ilaje people of Ondo State, where the offender could not be identified and was not caught red-handed, recourse was always had to *Ayélála* religio-magical practices. Investigation of crimal offences was carried out by divination through Ifa but mainly by Gbagala, a messenger or an agent to *Ayélála*, a divinity peculiar to these people in Ondo State. Among these settings, these divinites are regarded as custodian of morals as crimes too are against morals. For instance, *Ayélála*, as a deity among Apoi and Ilaje and Ese Odo Local Government Areas of Ondo State, came into being as a means for settlement of a long hatred and war between the two clans.

Among the people that constitute these settings, deotological belief of moral judgment was the order of the day. They were conventionalist. *Ayélála* is the existing popular divinity in the area and it is commonly called *Imale*. Among these people, they had *Ayélála* priest and that of *Gbàgàlà* who were always in charge of the administration. The court, unlike English courts, was the shrine used as venue in criminal trials. *Ayélála* took evidence of facts, passed verdict by conviction, gave option of fine and finally, it sentenced to death without option of fine depending on the gravity of the offence.

It could caution and discharge where the culprit confessed every offence or wrong committed just like the English courts. It confiscated property similar to forfeiture of property recovered in the course of detection of crime in the English legal system. In spite of the suppression by the Europeans, the practice was still prevalent even at their emergence and presence. Native courts and *Ayélála* court were sitting along the English courts.

Complex cases which could not be resolved, particularly criminal cases were reported to *Ayélála* court by the complainant. Its headquarters was at the Oluwa River within Ilaje Local Government Area of Ondo State. Many prominent cases had been resolved via this court. Indigenes in fact, preferred *Ayélála* trial to that of the native courts because of its unique mode of dispensing justice fast and speedily. Among these people, the divinity *Ayélála* was feared and this created peace and harmony among them in their respective communities.

After the second year of Lagos’ conquest by the British, they introduced the native courts During this period, the stream of African indigenous legal culture became polluted unlike when there was three-tier judicial system; the family head or compound head; ward chief and Oba’s palace. The white introduced a single venue or location, that is, the English type of court. At this time, the British administration had promulgated Ordinance No. 3 of 1863 introducing into the colony the English type of courts and laws. These laws are referred to as ‘’Received English Laws’’. This was the common laws of England and the doctrine of equity and statute of general application that were in force in England on the 1st July 1874 (later varied to 1st January, 1900).

By virtue of the emergence of the colonial law Validity Act 1765, colonial laws were given the power and potency to reign and only to be void if they are repugnant to the laws of England or repugnant to some Act of parliament (i.e. the paramount force legislation). The Supreme Court Act No. 4 authorised the Supreme Court to apply the following laws in the colony.

- Rule of common law
- Doctrines of equity
- The local laws and customs that were not repugnant to justice and good conscience [4].

Common law is part of English law that is derived from custom and judicial precedent rather than statute; these laws originated and developed in England based on court decision; ancient laws of England based upon society customs recognized and enforced. Equity came to mitigate the rigidity of common law [5].

At the introduction of Supreme Court Ordinance No. 4 of 1876, the native courts were permitted to apply Local laws and custom which are not opposed to natural morality and humanity and these marks the over-show of indigenous trials in their own ways in every African community.

The ordinances were from time to time repealed and re-enacted to confer territorial jurisdiction in response either to the local political development or to the changes or improvements in the British legal system and the law and application. For example, the Supreme Court Ordinances No. 4 of 1876 was repealed and re-enacted as the supreme Court Ordinances 1914 to make the law applicable to the whole Nigeria following amalgamation of country. The Magistrates Court Act 1933 and the High Court Act 1933

were passed to establish for Nigeria the English type of Magistrate and High Courts as we know them today.

It must also be noted that the native court which applied native laws and custom, were presided over by chiefs or alkali, but the supervisory jurisdiction over them lay with the residents or district officers who were British. The British administrative officers also presided over both supreme courts and provincial courts. this led to series of problems in application and interpretation of African customary laws, a grievous irony for a man who does not know one or understand one's language and way of life to be applying and interpreting one's culture and practices, it was a serious disaster as many African rules of custom were thrown away as being repugnant to natural justice, equity and good conscience. Up till 1906 in the North, the Governor was the sole executive and judicial powers were vested in him and were exercised by him.

Unlike the indigenous settings, courts sessions were held in permanent place and structures. There were permanent persons and structures. Trial too was accusatorial or adversarial. There was a presumption of innocence. Verdict was guilty or not guilty. There were compulsory taking of evidence and proceedings. Unlike in the traditional setting where the need for proof beyond reasonable doubt was unnecessary since criminal trials among the clans under reference was done finally on invocations of supernatural roles or religio-magical practices and beliefs (*Ayélála* court).

There was also sentencing varying from different terms of imprisonment to death just as they had in the customary settings among the Ilaje and Apoi. Appeals too lay from the decision of the Native court to the resident and in some cases to the lieutenant Governors. Appeals in other cases and in capital offence went to the British High Commissioner.

However, the independence constitution of 1960 provided that with the exception of contempt of court at common law, no person was to be convicted of an offence unless the offence was defined by a written law and the penalty for it was also prescribed in a written law *Nollun crimen sine poena nulla poena sine lega*. In *Aoko. v. Fagbemi* [6], the accused was charged with the offence of adultery under the criminal code, the Federal Supreme Courts of Nigeria held that adultery is not a criminal offence in the criminal code but an offence in the penal code and that a man shall not be punished for an offence that is not in a written law.

This unequivocally marked the withering away of unwritten customary law, criminal jurisdiction and authority of indigenous courts. Though, a thorough look at the provision may reveal that the restriction is only limited to criminal matters. The Evidence Act and High Court Laws permit the use of customary laws, provided that they are not repugnant to natural justice, equity and good conscience yet they are unwritten.

However there was a serious effect of all these laws and provision in criminal trials in the primitive settings. In fact, with existence of police force, compliant went straight to them rather than the compound heads, ward chiefs and palace; or any *Ayélála* priest in the settings under reference. Even when people decided to go to the *Ayélála* shrine for consultation, they were sometimes referred to as self-help which may be contemptuous.

From the analysis so far, it, suffices to say that before the advent of the colonialist, there were indigenous courts i.e. the compound head, ward chief and Oba palace and also the *Ayélála* court/shrine where complaints were lodged depending on the nature of the compliant and its stage, whether under interrogation or beyond. There were also agent for investigation i.e. divination which includes *Gbàgàlà, Ifa. Osanyin* to mention few. Now, after the emergence of the English legal system, we had the Native courts (The English court) and the indigenous court which were operating where there were no native courts.

The agent used for investigation was police, and written laws such as criminal procedure Act, criminal code, panel code rule of court and statutes generally came into being. All these were the body of rules in use. In view of all these, can we say that the emergence of the English legal system has brought better justice to the primitive setting than in their former method of criminal trials considering the rate at which crime are being committed in this contemporary society.

Once again the English legal system introduced oath taking though already part of the African judicial procedure. For instance a witness holding a Bible or Quran and say ''I, so person (mentioning his name) and proceed to say that the evidence he shall give before this honourable court shall be the truth and nothing but the truth'' one may ask how true are the evidence relayed to the court in form of testimony? We are quite sure that nobody could face *Ayélála* or other divinities in Africa and say '' the evidence I shall give shall be truth and nothing but the truth''; and still go on to lie.

The potency and fear in the African supernatural involvement in trials cannot be over emphasized. There had been general suggestion that in taking any political office, that public officers should be sworn in through the involvement of all these divinities. There is no doubt that it is evident and clear that the Englishmen had introduced a strange procedure to the indigenes of Africa. However, rather than canvassing a total condemnation of English Legal system, we want to suggest an integration of the two systems in our criminal jurisprudence.

The Meaning, Origin of *Ayélála* and Administration of justice by *Ayélála* Among the Ìlàjẹ and Apoi

There is little literature on *Ayélála*, we have Awolalu (1968) [7] and (1981) [8], Jegede (2011) [9], Fafeyiwa (2003) [10] and Akhilomen (2009) [11] and in spite of these few scholars who had written on *Ayélála* as a sacred divinity, a lot had been said about this deified sacred goddess. It is pertinent to state at this point that *Ayélála* that has become a popular goddess, feared and revered today by most people in Yorùbá land belonged, to two minor fractions of this ethic group (Ìlàjẹ and Apoi). *Ayélála* can be grouped among other deified beings like *Sango, Aje Olokun, Oya* and *Orisa-Oko* among others.

Ayélála was not the real name of the goddess according to some schools of thought. Many people who are actively in the worshipping of *Ayélála* were interviewed and gave a lot of historical facts about *Ayélála* but, only four assertions or historical facts about *Ayélála* have been considered to be necessary for discussion as other are considered to be distorted facts cooked up to satisfy some self interest and also inconsistent with already existing facts written on *Ayélála* by scholars. The first version is that there was a communal clash war between an Apoi man and one woman from Ìlàjẹ.

As a result of disagreement between the man. and the woman, the former killed the latter, and so war broke out between the two communities. It was a great war. When both communities saw the ravages of the war, they decided to come together for peace. The elders of the two factions went to consult *Ifa* Oracle on what they would do to sue for peace. It was then they were told that they needed human sacrifice, preferably a woman, plus the following items:- three yards of white cloths, three alligator pepper, three red parrot feathers, three needles, three native white chalk, five cowries and many kolanuts, it was then this woman slave was negotiated for purchase from the owner at Igomola Street, Erinje. The woman and the materials mentioned for sacrifice were brought to *Italita*, the site of the rituals.

The place was cleared, the woman was tied hands feet and buried alive. The body was made to stand erect leaving the neck to the head unburied. It was at the period of agony that the woman cried out "*AYÉLÁLA* O" meaning the world is great or incomprehensive. The original name of the Woman was said to be *"Lala"* and her Christian name was Ruth. *Italita* where the woman was buried alive was called Ita *Ayélála* till today.

A little shed was erected there with white cloth and materials. The woman, during her life time was to have to nine goddesses that she worshipped. At the time of the burial, two men stood beside her, one from Ilaje and the other from Apoi. The Ilaje man held her by the right hand while the Apoi man held her by the left; there they made their sacrifice, there was peace and concord in the land.

The second version has similar facts as stated above but, the only different area of the story is that the woman was not buried, the Ilaje man hit the woman on her hand and the woman shouted *Ayélála* and placed the hand on her hand while the Apoi man hit the left shoulder and her hand paralysed. There a cupboard was built to house her at the spot of Ita *Ayélála*. This is the version the research believes to be right and credible.

The reason for this belief is that when one looks at the symbol of *Ayélála*, there is a woman carrying a pot or calabash on her head holding it with her right hand, the other left hand down lifeless, this is in line with version that the Ilaje man hit the right shoulder that she placed on her head. The second reason is that any victim of *Ayélála* must not be buried, the corpse are deposited at *Ita Ayélála*. This position supports the version that the deified woman was not buried but a cupboard was built to house her.

The third version also confirms that *Ayélála* was a woman, from a distant Yorùbá land. The version does not dispute the fact that she had connection with Erinje Ugomola quarters. The version relays that there was an *Oro* festival forbidding woman from coming out on the land at a specific time. The festival was jointly performed by both Apoi and Ilaje people. This woman ran into *Oro*. As she was being dragged to *Italita*, she shouted "*Ayélála o!*". it was said that she was beheaded and buried where Ita *Ayélála* is today. They confirmed that the materials mentioned earlier are used in worshipping *Ayélála*.

The forth version also comfirms the goddess was a woman and the mother was an Ikale woman from *Igomolam* Erinje and the father from Ilesa. According to the version, the father came to Ikale land to sell "*Kitike* cloths, where he came across the mother. Her Christian name was Ruth. The woman was said to have broken the law of the land by seeing *Oro* and running away. It was as if she was being pusued for possible interrogation before she exclaimed "Ayelala" Consequently, she fell into a river called Ore Ara and died. The Ilaje man saw the corpse and carried it to Italita where he buried her with the assistance of an Apoi man. The materials stated earlier for worshipping *Ayélála* were also confirmed by this version.

According to the second version the first victim of *Ayélála* judgment were rats. An Ilaje market woman trader that dealt in Garri (some said fish) discovered that her goods were normally eaten and spoilt thought it was a human being that was doing the act called on *Ayélála* to bail her out of the problem by exposing the perpetrator of the act. The following day, so many rats were found on her canoe beside her goods and the destruction of her goods stopped. The second victim was the Ilaje market woman herself. According to the version, *Ayélála* killed her because she did not go back to *Ayélála* to inform her that her prayer had been answered according to her promise when she was seeking help from *Ayélála*. All these versions and facts about *Ayélála* were retrieved from interviews conducted on the field which are also similar to facts conveyed in some literatures by scholars, particularly Fafeyiwa [12].

Among the Ilaje and Apoi Yorùbá of South West Nigeria, *Ayélála*, played prominent role in their administration of criminal justice. *Ayélála* has its headquarters at *Ita-Ayélála* a fixed venue for administration of justice. People come down from different places to Ilaje to borrow this divinity to their respective locality. Akoko people of Ondo state borrowed this divinity from Ilaje. Also the Benin people of Edo State. The effectiveness of the judicial function of *Ayélála* cannot be undermined. It is pertinent to also mention that the first priest of *Ayélála* in Ilaje was "Idiogbe" and in Apoi Agbeleki from Ade quarters in Igbobini.

Many things had been said about *Ayélála.* Some described her as a snake while some use water as her symbol. So many symbols are used to portray *Ayélála*. *Ayélála* has no emblem but two prominent ingredients are essential for invocation of her jurisdiction, natural or local white chalk and water. It is also pertinent at this point to view what scholars have to say about *Ayélála.* According to Awolalu [13] while tracing *Ayélála's* origin and functions he stated that the cult of *Ayélála* arose out of the various sacrificial compensation of the life of an Ijaw slave woman, killed in substitution for the atonement of the sin of a run- away Ilaje adulterous man.

As a scapegoat, the slave woman was made to bear the consequences of the sin of another who had run to take asylum among the Ijaw; an act which caused serious disaffection between the Ijaw and the Ilaje. When being sacrificed, the slave woman, in great pain and anguish, could only mutter the words *Ayélála* meaning "the world is incomprehensible" or "the world is a mystery". From then on, *Ayélála* become the name by which she was known and called. Before she was sacrificed, a covenant of reconciliation and mutual kinship was made between Ilaje and Ijaw on the following terms, among others.

- *Ayélála* was to kill any member of the parties to the covenant who plans evil against one another.
- *Ayélála* was to punish with death any member of the two groups who engages in stealing, practices sorcery, witchcraft against each other.
- All contractual relationship between the two covenanting communities was to be faithfully and honestly executed under the watchful guidance of

Ayélála who would be invoked to kill all covenant breakers.

Before she was finally sacrificed, *Ayélála* the slave woman, made a solemn vow to witness and to punish non-compliance with the terms of the covenant and all future covenant to be reached in her name. *Ayélála* eventually became defiled, after her death it was observed that several deaths occurred in default of the covenant sealed on *Ayélála's* blood [14]. *Ayélála* became popular as a deity and her cult spread far and wide even to Benin Kingdom, Akoko, Ijebu waterside and Ekiti.

Up till today, before the jurisdiction of *Ayélála* could be invoked, an Ilaje and Apoi person must be present, and for strangers who are not, Apoi and Ilaje, they will be given the natural chalk and water from the shrine of *Ayélála.* The location where the rites was performed then is till today called *Ita-Ayélála* a junction while going to Mahin along the Oluwa River in the coastal area of Ondo State. *Ita Ayélála* is the headquarters of *Ayélála* and the venue for trials, deposit of the remains of offenders executed by *Ayélála* and confiscated property of deceased offenders.

However, from the information gathered around and the works on *Ayélála* certain things are settled

- *Ayélála* was a woman.
- She was used as a sacrificial lamb.
- Covenant of good neighborliness, morality was reached between Ilaje and Apoi.
- *Ayélála* enforces the covenant among the people that accept her [15].
- *Ayélála* settled he dispute

Among the Ilaje and Apoi people, *Ayélála* was feared and this had helped in the maintenance of peace and harmony among the people before, during and after the pre-colonial eras. Even at the introduction of English law, the role of *Ayélála* in peace management in the area had no rival. Treated cases of *Ayélála* in Ilaje and Apoi area are too numerous to be mentioned but one can make reference to the ones that occurred outside the area of recent.

Sometime in 2005, the Oba market in Benin City went up in flames. As the fire raged, hoodlums in the area had a field day looting goods belonging to the traders in the market. More disturbing was the fact that many shops not affected by the inferno were found broken into and emptied by looters. The next day Chief John Osamede Adun a.k.a. "Bomboy", a prominent citizen in the area, invited the priest of *Ayélála* a goddess widely revered and feared in Benin Kingdom.

The chief priest *Ayélála* consequently issued a public warning that as many as have taken away goods which do not belong to them should return immediately or face the wrath of *Ayélála*. The following morning, goods earlier carted ways re-surfaced in the market. The same scenario was re-enacted when the popular market Uselu Market was gutted by fire a few minutes thereafter. The results achieved through *Ayélála* cannot be compared with the Nigerian conventional police; even the American Federal Bureau of Investigation (FBI) with all the gadgets and weapons at their disposal [16].

Ayélála is a judicial institution and not ordinarily an enforcement agent or oath taking exercise common among the Yorùbá of the Southwest; it has inherent in it all that it required for judicial procedure. *Ayélála* observes the principle of natural justice. Parties are allowed to state their cases before the invocation of *Ayélála* except where *Ayélála* invokes her jurisdiction *suo motu* in cases concerning the whole community or witchcraft and sorcery. Even where party fails to appear, emissaries of the deity are sent to the evading party to inform him of the consequences unlike the English court where upon the service of hearing notice and proof of service, matters are heard in the absence of the absconding party and judgment passed is enforceable against the absenting party provided there is proof of service [17].

Technicalities involved in English Court are not present in *Ayélála* court. Indigenes prefer to settle their cases in *Ayélála* Court. This can be related to the position of Olaoba [18], who submitted that the law should be placed on the central theme of the society otherwise it will not be efficacious.

Invoking the Jurisdiction of *Ayélála*

Jurisdiction is a very serious important issue that must first be ascertained before commencement of any action or trials. Jurisdiction is the foundation upon which a court of law or any adjudicatory body is built. It simply can be defined as the power or authority of a court of law to adjudicate over a particular matter [19]. In its connotation, jurisdiction means the authority that a court has to decide matters before it, which means the entire basis of taking cognizance of matters presented to the court formally, for the purpose of deciding them [19].

His Lordship I.T. Muhammad, J.S.C., described jurisdiction in the case of *Attorney –General of Kano State. v. AG Fed* [20]. as follows:

Jurisdiction is the blood that gives survival of action in a court of law without which the action will be like an animal that has been drained of its blood. It will cease to have life, any attempt to resuscitate it without infusion of blood into it will be an exercise in futility. The Supreme Court had earlier expounded on these and similar definitions in the case of *Mobil Producing Nigeria Unlimited. v. L.A.S.E.P.A* [21]

For a court to be said to have jurisdiction over a particular case certain features must be present or exist on the face of the proceedings to prove the existence of such jurisdiction. It has long been settled [22] that a court is competent to exercise jurisdiction; where the following conditions are satisfied:

- The court is properly constituted as regards members and qualification of the Bench, such that no member is disqualified for one reason or the other;
- The subject matter of the case is within its jurisdiction; and there is no feature in the case, which prevents the court from exercising jurisdiction; and
- The case comes before the court by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

The case of *Madukolu. v. Nkemdili* is the *locus classicus* on issue of jurisdiction and the case has been followed a great deal by superior courts of record in Nigeria [23]. It is germane to state that for a court to have jurisdiction over a particular case, both the subject matter and territorial aspect or constitution of its jurisdiction must co-exist. In other words, the matter must be such as the court is competent to adjudicate upon and such matter also falls within the

territorial jurisdiction of the court which the matter brought for adjudication. It is also important to state that when some persons have been sued jointly, the court cannot decline jurisdiction over some and assume it over the others: what affects some must affect the others [24]. (Tar, 2008:338-339).

Under the *Ayélála* traditional trial either in a civil action or criminal action, jurisdiction of *Ayélála* is invoked in two ways either by the parties or *Ayélála suo motu* i.e. on her own. The parties will invoke the jurisdiction when the agrrieved party goes to the shrine to lodge complaint and in this regard the offender is unknown or he has refused to accept the verdict that he committed the criminal act. *Ayélála* being a divinity of justice has great power over evildoers such as sorcerers, witches and wizards. *Ayélála* suo motu invokes her jurisdiction against these evil doers and pass judgment on them in the community. In order to invoke the jurisdiction of *Ayélála*, there must be five cowries, three yards of white cloth, there parrot feathers, three needles, three native chalk, kola nuts and native gin (Ogogoro). There will be incantation and songs to welcome *Ayélála* into their midst. One of her songs is: *Ayélála igbokoko ma ma jaye baje o!* Meaning *Ayélála* the great, do not let the world perish. To make the invocation complete and comprehensive, an Ilaje man and Apoi man must stand by to perform the ceremonial obligations (Fafeyiwa 2003). Where all the material listed above are not complete or one of them is wanting in the course of invoking the jurisdiction of *Ayélála*, it means the tribunal is not duly constituted just like in the English court where whether the judge is disqualified in its members, qualification, subject matter and failure to comply with the due process of law.

Still on issue of jurisdiction, just like in the English Court where the judge must consider the subject matter before assuming jurisdiction, an *Ayélála* priest must also consider the subject matter. This is done when a person or complaint is brought before the priest, he must firsts divine or investigate the complaint whether it is that of *Ayélála*. This is done by divination and in most cases, all *Ayélála* priests are also a diviner.

Upon the invocation and welcoming of *Ayélála*, the complainant will lodge his complaint and the offender if known but decline, the plea will be taken like in English court. The accused will be asked: Are you guilty? Or not guilty? If he says he is not guilty, it means the accused has put himself on the trial and the *Ayélála* priest will perform the rites and set *Ayélála* after the culprit. In most cases, they will state a specific period of time when *Ayélála* must strike. The trial takes the form of oath taking before *Ayélála* but it involves no object or having personal or body contact with anything in the shrine.

This is the recent and modern approach in the trial to avoid any illegality that could arouse the violation of any existing penal law. This is more popular now among the Ilaje and Apoi people unlike the other type which is more or less trial by ordeal. In this regard, the suspect would be given a serum or concussion to take by the *Ayélála* priest. According to the priest, this mode of trial has long been jettisoned by the people.

Another situation may occur where the accused is unknown, there will be public announcement to the effect that the person who did the illicit act should come and confess. A limited period of time will be mentioned before the jurisdiction of *Ayélála* will be invoked against the culprit.

There is no oral evidence or record in the proceeding and the next thing is judgment. No written addresses or compliance with any rule like the English court and this makes the proceeding or administration of justice system expedient and less expensive.

Ayélála Criminal Trial Distinguished from Trial by Ordeal and Cult

Trial by ordeal was an ancient judicial practice by which the guilt or innocence of accused person was determined by subjecting them to an unpleasant, usually dangerous experience. Classically, the test was one of life or death and the proof of innocence was survival. In some cases, the accused was considered innocent if they escaped injury or if their injuries healed.

In medieval Europe, like trial by combat, trial by ordeal was considered a *judicium Dei* meaning a procedure based on the premise that God would always help the innocent by performing a miracle on their behalf. Roberts observes that even among primitive tribes where trial by ordeal is practiced, the decision arrived at are not necessarily unfair [25]. The practice has much earlier roots, attested to as far back as the Code of Hammurabi and the Code of Ura-Namu.

Garner *et al*. describe ordeal as [26]

The most ancient of Trial in Saxon and old English Law, being peculiarly distinguished by the application of or judgment of God. *Judicium Dei.*

In African contest, trial by ordeal may be a mixture of Oath-taking and endurance test (Emiola 2011: 87). "Oath," according to Quashiga was essentially the normal mode of proof in disputes about property and complemented by the ordeal in proof of criminal accusations. Elias (1956:219) notes that "truth serum" were used by law enforcement agents in the United States to extort confession from persons suspected and the accuser may be subjected to physical combat or the accused made to undergo some endurance test such as handling hot iron.

Trial by ordeal is of various forms like handling of hot object mentioned above, this trial by fire. It could be walking over hot coals. If they were burned in the process, they were presumed guilty. For instance, in the Hindu version of the trial by fire, a woman suspected of adultery must stand in a circle of flame, or on top of a pyre, and not be burned. There is also trial by hot iron, one pound of iron was heated in a fire, and pulled out during a ritual prayer. The accused had to carry this iron the length of nine feet (as measured by the accused's own foot size). Their hands were then examined for burns. There is trial by water, the defendant was bound in the fetal position and thrown into a body of water. Contrary to popular belief, those that sank were not drowned but were hauled out of the water, and those that floated did not float because they could swim: if he or she is floated, they were guilty, and if they sank, they were presumed innocent.

This was the most common ordeal undergone in the new world, and was seen during the time of the Salem witch trials. It was argued that surprisingly, high numbers of people were deemed innocent by this method, but it was largely the younger women and the men who were exonerated in these trials. Their lower body fat levels probably helped them sink down in the water. Trials by ordeal could also be by hot water, in this regard the accused is asked to pick an object from hot water filled to his elbow.

After several days if no blisters were present, he was presumed innocent.

Trial by ordeal could also take the form of trial by host. This is practiced where the accused was a priest and was charged with the allegation of lying on oath i.e. perjury. The priest would go to the altar and pray loud that God would choke him if he were not telling the both. He would then take the host (the holy eucharis) and if he was guilty of perjury or the crime, he would either choke or have difficulty swallowing. There was also trial by ordeal bean, a trial of Old Calabar AkwaAkpa involving the *Eser-e*, or the ordeal bean now known as the Calabar bean (physostigma venenosum.) a common use was in trial when someone was accused of witchcraft. If they vomited the beans, they were presumed innocent and if they digested the beans, they were guilty. Majority of the accused that digested the bean died of the effect.

There are various way of executing trial by ordeal. The types of trial by ordeal are not limited to the ones stated above. We also have trial by ordeal by snake, Tagena (nut of the tagena tree Cerbera Odollam used in Madagasca) and so on. The law of every land looking at the uncertainty speculation and risk accused persons are opened to have decided to abrogate trial by ordeal.

For instance in Nigeria, Sections 207 -213 of the Criminal Code [27] make it an offence to engage in trial by ordeal. It is punishable with penalties ranging from one year imprisonment to death sentence. This law does not define trial by ordeal but only explain from what will constitute trials by ordeal and a careful look at the sections would reveal that *Ayélálá* does not fall within the contemplated trials that will fall under trial by ordeal the practice of serum has long been buried; in fact, the *Ayélálá* priest will not have any types of physical touch with the accused throughout the trial. Therefore, this makes *Ayélálá* criminal trial a fit and proper criminal legal system in the face of law.

Again, to buttress the legality of *Ayélálá* criminal justice system, it is important we state that *Ayélálá* is not one of these societies prohibited by law. According to Emiola (2011), although it is wrong to judge the potency of native law by English law but since that is the yardstick available in the country, this has necessitated our references to this existing written laws that talk about native laws, these societies are prohibited by sec 62 (2) (11) of the Criminal Code [28]. Also, sec 318 of the constitution of the Federal Republic of Nigeria 1999 (as amended) forbids the existence of such association. The section provides thus:

Secret societies include any society, association, group or body of person (whether registered or not):

a. That uses secret signs, rites or symbols and which is formed to promote a cause, the purpose or part of the purpose of which of which is to foster the interest of its member and aid one another under any circumstances without due regard to merit, fair play or justice to the detriment of the legitimate interest of those who are not members.
b. The membership of which is incompatible with the function or dignity of any public office under this constitution and whose members are sworn to observe oaths of secrecy, or The activities of which are not known to the public at large, the name of whose members are kept secret and whose meetings and other activities are kept secret.

Ayélálá is not one of such associations. As a matter of fact, trial by it is prominent and relevant among the Ilaje and Apoi people. From all these facts, *Ayélálá*, is not a trial by ordeal. It is not a secret cult or secret society prohibited by the existing legal frame work in this country. *Ayélálá* is part of the belief and practice of a particular group of people which has formed part of their way of life. The imposition of the foreign culture on these nations and their long control and subjection to the practice of the alien government, written laws resulted in the supplanting and obliteration of all these beautiful and effective indigenous laws, customs or better put way of life.

Conclusion

A lot had been said on Africa legal thought or African customary law by so many scholars such like Richard F. Burton, Kolle. Schapera (1938) [29], Gluckman (1955) [30], Whitfield (1948) [31] and Howell (1954) [32] there after scholars like Fage (1970), Ajayi and Dike (1968) for African History, Mbite (1973), Teslim Elias (1956) [33], Driberge (1934) [34] and Olaoba (2008) [35] to mention few. There also exists several scholarly writings, commentaries, judicial decisions and by-laws on integration of customary law and English legal system. And, of course, in the area of civil law particularly land law, matrimonial cases, succession and inheritance but in respect of criminal law there are few if not non except in connection with religion and its impact on the people in the society.

The reason for this little or no contribution is viewed to be as a result of similarities concerning matrimonial cases and inheritance among the nation and tribes and existing judicial decisions relating to marriage, inheritance and succession. However, under the criminal justice system, there are codes and written laws also, diversified belief and religion since these two factors also affect the dos and don'ts of every society. For instance, adultery is an offence under the penal code in Nigeria while under the criminal code, adultery is not an offence. The reason for this is the Islamic background of the northern part of the country where penal code is applicable.

Again, the increase in crime rate in the country and perversion of justice experienced in administration of justice in courts by corrupt judges and bad police officers in the course of their investigation coupled with delay in the English criminal justice system and the technicalities involved which are all wanting under the traditional criminal trial propelled the idea in the work.

Ayélála traditional criminal justice system is expedient in administration of criminal justice; it causes no delay and is less expensive. The investigation mechanism is effective unlike the Nigeria police force that may likely pervert their investigation.

Many persons are wronged but they find it difficult to approach the court to seek redress because of the lump sum amount of money involved in setting in motion the machinery for administration of justice. The study conducted at Okitipupa Federal Prison Services revealed that the total number of awaiting trial inmates are more than the convicted inmates and the simple reason proffered by the respondents is the problem of delay in court, that is, either adjournment by their solicitors, magistrates' absence from court, failure to pay professional charges of solicitors and industrial action.

Ayélála traditional criminal trial is devoid of all these factors. The Nigerian prison services statistical information as at 31st day of March, 2016 revealed that the total number of inmates' population is 63,142 and the total number of convicted inmates is 17,879 while awaiting trails that are unconvicted prisoners are 45,263. We are of the opinion that an integration of a speedy legal system like the traditional legal system for instance, *Ayélála* traditional criminal or her involvement in administration criminal justice system will go a long way to decongest the prisons.

There is no gainsaying that *Ayélála* traditional legal system is effective, this sacred deity is feared and revered by the people in the area. The traditional legal system has an efficacious investigative means and ensures that the principle of natural justice is observed. *Ayélála* as described and examined in this study is still very effective as a deterrent against criminal tendencies and false accusations.

There is no doubt from the findings of the study that the institution of *Ayélála* has been an effective means of crime control due to the fear of supernatural sanctions, social stigmatisation, public disgrace, punishment from the gods and ancestors if found guilt. It has created a morally sound community among the Ilaje and Apoi people in its ability to help combat crime, maintain good human relationships, fairness, and fidelity in establishing the truth or falsehood in doubtful and disputed matters.

It is devoid of human and government control or influence. Therefore, an integration of this legal system into English criminal justice system among the natives will help reduce crime rate, corruption and justice will be better achieved in our courts.

Recommendations

Globally, Crime has become another terror for both the government and citizens to arrest and another field of study for scholars tasking their thinking faculty on how it can be curbed in our society. Crime is increasing with such rapidity that we are now closed to being tagged as anarchists in this country. We live in the midst of anarchy, danger of armed robbery, kidnapping, rape, violence, destruction and economic crime offences. Abogunrin (1994) gave an insight as regards the likely causes of the phenomenon. He mentions such things such as godlessness, economy, and political action of various governments as likely causes.

However, the institution created to arrest the situation on ground is found to be ineffective due to the fact that it is alien and not in tandem with the way of life of the people. A system which is non-compliance with the way of life of a set of people will be difficult to comply with. Under the English legal system, every lawyer wants to win his case in favor of his client whether counsel to accused person or that of the State. It now depends on the competence of the lawyer employed by the parties.

The judges are expected to play the role of an oracle or the ubiquitous God who sees everything, know what went wrong, how it went wrong, where it went wrong and who did what. But they were not always at the scène of the crime, even the police officer who investigates was not there. Therefore, the conclusion of the judges will only be derived from the evidence adduced by the parties and submissions of counsel and his fair-mindedness, that is, if he is not the corrupt type.

His duty and responsibility begin however, when he has performed the function of evaluating what has been adduced before him, drawing his deduction and coming to conclusion one way or the other.

This is a serious gap in our criminal jurisprudence in this country which this research work intends to fill. Many are in custody serving terms of an offence they never committed and due to technicality, corrupt judges and police they are languishing in prisons. In the English legal system, the procedure is alien, compared to the trial by the sacred divinities in the African setting like *Ayélála, Sonpono, Ogun, Obatala and Sango* to mention few. As noted by Olupona (2004), the religion and social system of Africans are inseparable.

Law is secular, ethical codes and taboos are dictated by the divinities to guide the life of individuals, families and communities (Mbiti, 1976). Essien (2005) in confirmation of the place of religion in social control points out that religion is a powerful social institution that purports to establish a set relationship between the supra-human world and human beings. It deals with explanations about life and living, coping with existential problems and adapting to environment circumstances. There are hardly aspects of human life which are immune from religious influence directly or indirectly. The pervasiveness of religion, its deep rootedness in human consciousness and its formidable presence, vitality and expansiveness in human activities make it an immense resource. The divinities are metaphysical and ubiquitous. No need of any judge or lawyer to solicit. The judgment comes from above, the metaphysical realm.

Among the Yorùbá of southwestern Nigeria, *Ogun* is the divinity in charge of iron and there are adherent claims that anyone who commits an offence and lies before *Ogun* will die of auto-crash. *Sango* is the divinity in charge of thunder and lightning and anyone who lies before *Sango* will be struck down by thunder. *Ayélála* is another divinity feared by the Apoi and Ilaje people and anyone who lies before *Ayélála* will be visited with death. As observed by Jegede (2011), it is reputed for being very effective in apprehending witches as well as culprits in matter of theft, murder, fighting and other offences, civil and political in the indigenous communities.

It is in view of the foregoing we are suggesting an integration of the traditional system into the English legal system of criminal justice in this country. Although, this recommendation may appear difficult to be achieved in view of diversified belief and different divinities in various Nigerian societies. However, one may think of the possibility of same if the legal framework is created by the legislative arm of government in the various states. One may also query the possibility of this recommendation from the perspective that this traditional legal system is from a micro society and how it will extend to the larger society.

It is therefore, necessary at this point to consider some laws in this country that were first enacted in some states and thereafter emulated by other states. For instance, offence of kidnapping and abduction are not grievous felony punishable with death sentence or life sentence. But as these offences became rampant in the eastern part of Nigeria, their municipal laws incorporated different law for kidnapping and abduction with capital punishment and life sentence. Other states in the country emulated this and now we have anti-kidnapping law of each state.

It is the researcher's candid opinion that if the Ondo State Government effects the policy of incorporating *Ayélála*

traditional criminal justice system in their administration of criminal justice by creating a Law to lunch it and if other states see the effectiveness, they too will incorporate other sacred divinities like *Ogun, Sonpono, Sango, Amadioha* e.t.c. into their criminal justice system in their respective areas.

The Alternative Medicine Association made serious agitation that they too be recognised like the medical doctors in the country and have achieved their aim. Their agitation that they should be incorporated into the Hospital management board is still a saga. The bill to that effect has passed through the second stage at the level of parliament of this country. A strong agitation for incorporation of *Ayélála* and *Gbagala* into our criminal justice system is being suggested here and this will be achieved if seriously clamored for.

We further recommend the documentation of the deities of *Ayélála* and *Gbagala* together with other divinities in Yorùbá land to play role in the administration of justice among the people and further research on them as this will bring out their usefulness and advancement especially with respect to their procedural frame work.

The incorporation of the divinities will also help in the area of swearing in political functionaries on assumption of public offices and at the same time in area of oath taking in court before evidence is given.

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